IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No.2232 of 2004

Amichand Amratlal Shah ...Petitioner.

vs

Bank of India and & Ors. ...Respondents

Mr. Gaurav Joshi with Mr Gaurav Kothari i/b Shri S.J. Khera for the Petitioner.

Mr. Shekhar Shetye with Ms Swati Deshpande i/b M/s Boodhanwala and Co for respondent No.1.

Mr M.S. Gyani for respondent No.2.

CORAM: H.L.GOKHALE, Acg C.J. & V.M.KANADE J.

DATE: JANUARY 23, 2007.

P.C.:-

Heard Mr. Joshi in support of the writ petition. Mr. Shetye appears for respondent No.1 Bank. This petition seeks to challenge the order dated 15th November 2002 passed by the Debt Recovery Tribunal II, Mumbai whereby the DRT suo-motu recalled its earlier orders dated 3.4.2001, 1.8.2001 and 10.10.2001. The petition also seeks to challenge the order dated 18.7.2003 passed by the Debt Recovery Appellate

Tribunal whereby the appeal preferred by the petitioner was dismissed by the DRAT. Brief facts leading to the filing of this petition are as follows:

2. The first respondent Bank has filed Original Application No. 1143 of 2000 to recover certain amounts from the petitioner herein. This amount was to the tune of Rs. 30 lacs plus interest. The petitioner stood as a guarantor for the return of that amount. During the course of the proceedings it so happened that the petitioner sought inspection of certain documents and it is the case of the petitioner that although orders were passed granting inspection, inspection was not given to the petitioner. The submission of the first respondent Bank is that inspection was in fact given but there was certain correspondence, inspection of which could not be made available. Ultimately the Tribunal passed an order dated 1.8.2001 stating that in spite of earlier directions inspection was not being given and in case compliance is not done, the original application will stand dismissed and consequently the original application stood dismissed.

3. It is material to note that the respondent Bank filed one application for review of the order dated 1.8.2001 and that

application was allowed to be withdrawn with liberty to file fresh application. Then an application was filed by the bank being Application at Exh 39. The petitioner filed their application in the nature of affidavit being Exhibit 15 stating that the original application stood dismissed. Both these applications were considered by the DRT and the tribunal passed the impugned order dated 15.11.2002. It was submitted on behalf of the bank that the stringent provisions of Order XI Rule 21 will apply only in extreme cases where there is contumacy on the part of the defendant or a willful attempt to disregard the order of the court is established. It was further submitted that the order in the nature that was passed that the original application stood dismissed for not giving inspection of certain documents, was not called for. In this connection reliance was placed on the judgment in M/s Babbar Sewing Machine Co vs Tirlok Nath Mahajan reported in AIR 1978 SC 1436, which was to the similar effect.

4 The learned Judge noted the submissions of both parties. He observed at the end of paragraph 10 of the impugned order that the basic order was not passed on merit, and in view of the above legal position, in his view such an order could not have been passed. He, therefore, took a view that the order

will have to be treated as non-est. Thereafter the learned Judge observed that as such tribunal has sou-motu power to recall its order and in the interest of justice he was doing so by the impugned order that he has later passed. For these reasons he dismissed the application filed by the petitioner being Exhibit 15 praying that the original application be treated as stood dismissed. The learned Judge recalled the observations against the Bank in the tribunal's order dated 3.4.2001, 1.8.2001 and 10.10.2001. In as much as the learned Judge was exercising suo-moto power the review petition had become in fact redundant. This order was carried in appeal before the Debt Recovery Appellate Tribunal which dismissed the appeal after hearing the parties vide its order dated 18th July 2003. All these orders are under challenge in this petition.

5. Mr. Joshi appearing for the petitioner submits that the order passed by the DRT was a suo-motu order as stated by the DRT itself and such an order could not have been passed by the DRT The submission of Mr. Joshi was that the power to recall its own order was made available to the tribunal under section 22(2)(e) of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and it was specifically regulated by rule 5A of The Debts Recovery Tribunal (Procedure) Rules,

1993. For ready reference we quote section 22(2)(e) and rule 5A which read as under:

> "22. Procedure and Powers of the Tribunal and the Appellate Tribunal-
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> (1) The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.
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> (2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers, as are vested in a civil court under the Code of Civil Procedure, 1908(5 of 1908), while trying a suit, in respect of the following mattes, namely:-
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> a) summoning and enforcing the attendance of any person and examining him on oath;

b) requiring the discovery and production of documents;

c) receiving evidence on affidavits;

d) issuing commissions for the examination of witnesses or documents;

e) reviewing its decisions;

f) dismissing an application for default or deciding it exparte;

g) setting aside any order of dismissal of any application for default or any order passed by it exparte;

h) any other matter which may be prescribed.

(3) Any proceedings before the Tribunal or the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860) and the Tribunal or the Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

5A- Review:-(1), Any party considering itself aggrieved by an order made by the Tribunal on account of some mistake of error apparent on the fact of the record desires to obtain a review of the order made against him, may apply for a review of the order to the Tribunal which had made the order.

(2) No application or review shall be made after after the expiry of a period of sixty days from the date of the order and no such application shall be entertained unless it is accompanied by an affidavit verifying the application.

(3) Where it appears to the Tribunal that there is no sufficient ground for a review, it shall reject the application (but where the Tribunal is of opinion that the application) for review shall be granted, it shall grant the same.

(2) provided that no such application shall be granted without previous notice to the opposite party to enable him to appear land to be heard in support of the order, a review of which is applied for).”

6. Mr. Joshi submits that in as much as specific power is given to a party to apply for review of an order by which it is aggrieved, that is the only avenue which is available for correcting the error apparent on the face of the record for which a provision is made in rule 5A. He submits that the bank having applied for review of earlier order and that application having been withdrawn, the bank filed second application for review. The period of limitation under sub-clause (2) of rule 5A i.e. Sixty days ought to have been read against the bank and the application ought to have been rejected. Reliance is placed in this behalf firstly on a Division Bench judgment of this Court in Damomal Kausomal Raisinghani vs Union of India and ors reported in AIR 1967 Bombay 355. This judgment is on the powers of the Chief Settlement Commissioner in respect of the order passed by his counter part under the Displaced Persons (Claims) Supplementary Act 1954. In paragraph 9 of the judgment the Division Bench observed that the power to review a prior order is principally the power vested in an officer to review an order previously made by himself and not by anybody else. It is in this context that the Division Bench observed that it is abundantly clear that the power to review, whatever be its limits, arises only when an application by a person aggrieved in that respect has been made and then it is

observed that the Code of Civil Procedure does not confer on courts any general power of reviewing its decision suo motu.

7. What is material to note in this judgment is that the court criticized review of the order passed by one officer by another officer and it was only in this context that the above observations were made. It is then submitted by Mr. Joshi that merely because a certain authority was not cited that cannot be a ground for review. He relied upon a judgment of the Apex court in the case of Dokka Samuel vs Dr Jacob Lazarus Chelly reported in (1997) 4 SCC 478, which lays down that omission to cite an authority is no ground for reviewing prior judgment. He also relied upon a judgment in Parsion Devi and ors vs Sumitri Devi and ors reported in (1997) 8 SCC 715, which lays down that under the garb of review, the court is not expected to exercise the appellate power. It thereafter held that there is clear distinction between an erroneous decision and an error apparent on the face of the record. In this case we are concerned with the error which the tribunal itself has detected by accepting that stringent provisions of Order XI rule 21 of the CPC could not be applied and, therefore it has exercised its suo motu power.

8. Mr. Joshi raised a question of limitation. His submission is that if a party could not have applied for review within the period of limitation prescribed, the court could not have exercised the power that it has. We have noted the submissions of Mr. Joshi as stated above. He has principally pressed into service the provisions of section 22(2) of the DRT Act to submit that the power of review is subscribed by that section. What is material to note is that sub-section (1) of section 22 clearly lays down that the tribunal shall not be bound by the procedure laid down by the CPC but shall be guided by the principles of natural justice. The provision of sub-section (2) of section 22 is undoubtedly a specific provision but it will have to be read as a clarificatory one which is controlled by what is laid down in sub-section (1). Again as regards the power of the tribunal is concerned, when an application is made to the tribunal it has to be guided by the detailed provisions made under section 19 of the said Act. Sub-section (25) of section 19 lays down that the tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justices. Preventing abuse of its process or securing ends of justice are the grounds which are available even otherwise to a civil court under section 151 of the CPC

which states about the inherent power of a civil court. The civil court thus has this power to do whatever that is expedient and necessary to secure the ends of justice or prevent abuse of its process.

9. In the present case we are concerned with the determination of the power of the tribunal under section 22(1) which is to be guided by the principles of natural justice and it clearly lays down that it shall not be bound by the procedure laid down in CPC. The powers of the tribunal are, therefore, clearly wider and in the interest of justice if the tribunal finds that by passing an order on its own, there was resultant abuse of its process and that ends of justice would be suffering inasmuch as the main original application itself was to be dismissed on that ground as claimed by the petitioner that some inspection was not being given, that was precisely a matter of concern for the tribunal. Therefore on an error being pointed out, the tribunal on its own can recall its earlier order. As stated above the order is clearly referable to section 22((1) read with section 19 of the Act. In view of what is stated hereinabove, in our view the Debt Recovery Tribunal as well as the Debt Recovery Appellate Tribunal were right in passing the impugned orders.

Petition is therefore dismissed.

ACTING CHIEF JUSTICE

V.M.KANADE, J.